IN THE HIGH COURT OF DELHI

Crl.M.C. No.6299-304/2005

M/s.T.Azzezur Rehman & Co. & Ors. ...Petitioners/Accused
! through: Mr.P.R.Aggarwal, Adv.

VERSUS

$ M/s.Super Supplies & Anr. .... Respondents
^ through: Mr.R.S.Reen for respondent No.2.

RESERVED ON: 06.08.2007

% DATE OF DECISION: 10.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. At the outset I may note that learned counsel for the petitioners has drawn out the memorandum of parties in a most unsatisfactory manner. The memo of parties states that 6 petitioners have joined in a common action to challenge the summoning order dated 18.5.2002. But, in the preamble to the petition and the prayer made it is stated that only petitioners No.1, 4 and 5 are approaching the Court praying that the

summoning order be quashed vis-a-vis said petitioners.

2. Learned counsel for the petitioners who is a senior member of the Bar is expected to be more vigilant while drafting petitions.

3. Respondent filed a complaint under Section 138 read with Section 141 of the Negotiable Instruments Act 1881 impleading 6 respondents as accused. The same are as under:-

> "1. M/s.T.Azeezur Rehman & Co., 12, Karpura Mudoli Street, Periamet, Madrass.
>
> 2. Shri A.Niaz Ahmed.
>
> 3. Shri T.Abdul Jabbar.
>
> 4. Shri T.Azeezur Rehman.
>
> 5. Shri T.Habeebur Rehman.
>
> 6. Shri A. Faiyaz Ahmed.
>
> All residents of 12, Karpura Mudoli Street, Periament, Madrass."

4. Necessary averment against the accused persons made in the complainant are that accused No.1 is a partnership firm and accused No.2 to 6 are its partners. That accused No.2, as partner of accused No.1 issued a cheque in sum of Rs.5 lacs from an account maintained by the branch of accused No.1 called Nadira Leather Co., Madras. It was stated that accused

No.1 owed Rs.90 lacs to the complainant and Rs.5 lacs was paid to liquidate part liability.

5. Alleging that the cheque was dishonoured and notice of dishonour was served upon the accused, prayer made was to take action against the accused persons as per law.

6. Learned Metropolitan Magistrate took cognizance of the complaint and issued summons for appearance of the accused persons.

7. A two fold submission was urged by learned for petitioners No.1, 4 and 5 at the hearing held on 6.8.2007.

8. It was firstly urged that the cheque in question which formed the foundation of the complaint as per the complaint was issued by accused No.2 and was admittedly drawn from an account in the name of Nadira Leather Co. Madras. Thus, it was urged that neither petitioner No.1 nor petitioner No.4 nor petitioner No.5 could be made liable on account of the said cheque not being cleared for payment by the banker on whom the cheque was drawn as they had no concern with the cheque.

9. The second contention urged was that there are no averments in the complaint that petitioners No.4 and 5 were the persons in-charge and responsible for the conduct of the

business of respondent No.1. Thus, qua said petitioners, it was urged that the summoning order requires to be quashed.

10. The first submission made by learned counsel for petitioners No.1, 4 and 5 appears to be very attractive at the first blush. But, a little probe reveals that learned counsel for said petitioners is attempting to raise a castle of sand without any foundation.

11. Pertaining to the cheque in question, in para 4 of the complaint it has been specifically pleaded that accused No.2 signed the cheque on an account maintained with Allahabad Bank by the branch of accused No.1 at Madras carrying on business in the name Nadira Leather Co.

12. There is no prohibition in law for a partnership firm to carry on business under any name and style. The fact that normally a partnership firm carries on business under its own name and style does not mean that a partnership firm cannot adopt any other trade name or trading style.

13. Indeed, in the instant case the 5 partners of accused No.1 after drawing up an agreement to carry on business as partners with effect from 1.11.1975 appended a codicil to the partnership deed recording as under:-

> "The Partners of the firm have started a Branch

> in 59, Perianna Maistry Street, Madras-3 in the name of Nadira Leather Co. and a Tannery in Thuthipet from April 1976 and the profit and loss of these belong to this firm T.Azeezur Rehman & Co.
>
> This is to be treated as part and parcel of partnership deed dated 13.11.75."

14. Thus, it is an obvious case where accused No.1 was carrying on business at Madras under the trading name and style Nadira Leather Co. An account was maintained by accused No.1 in said trade name with Allahabad Bank, from which account the cheque in question was issued.

15. Thus, no case is made out for interference vis-a-vis petitioner No.1.

16. Aforesaid reasoning takes care of the first submission made by learned counsel for petitioners No.1, 4 and 5.

17. To appreciate the second contention urged by learned counsel for petitioners, Section 141 of the Negotiable Instruments Act needs to be looked into. Relevant part thereof reads as under:-

> "(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be

proceeded against and punished accordingly.

xxxx xxxx xxxx

(a) "company" means any body corporate and includes a firm or other association of individuals."

18. Pertaining to the liability of the partners of a partnership firm, in para 6 of the report published as *Monaben Ketanbhai Shah & Anr. vs. State of Gujarat & Ors*. AIR 2004 SC 4274, Supreme Court has opined as under:-

> "Section 141 does not make all partners liable for the offence. The criminal liability has been fastened on those who, at the time of the commission of the offence, was in-charge of and was responsible to the firm for the conduct of the business of the firm. These may be sleeping partners who are not required to take any part in the business of the firm; they may be ladies and others who may not know anything about the business of the firm. The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed they were not in-charge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact."

19. Though, the complaint is silent vis-a-vis the authority of the partners of accused No.1, the partnership deed, vide clause 7 and 10 records as under:-

"(vii) The bank account of the firm shall be operated by either of the first, second and third partners.

(x) The partners shall attend to the business of the firm diligently. The first, second and third partners are authorized to negotiate for loan or overdraft facilities with or without security for the purpose of the firm and by offering security if necessary any or all the firm's properties. The fourth and fifth partners have no borrowing power in the name of the partnership."

20. Co-relating the five partners of accused No.1 vis-a-vis their identity as accused in the complaint the position would be as under:-

(i) T.Abdul Jabbar ... First partner:Accused No.3.

(ii) T.Azeezur Rehman ... Second partner : Accused No.4.

(iii) A. Niyaz Ahmed .... Third partner : Accused No.2.

(iv) T.Habeebur Rehman .... Fourth partner : Accused No.5.

(v) A.Faiyaz Ahmed .... Fifth partner : Accused No.6.

21. As noted above, vis-a-vis the partners the instant petition was filed only for the benefit of accused Nos.4 and 5 viz. the second partner T.Azeezur Rehman and the fourth partner T.Habeebur Rehman.

22. Vis-a-vis the fourth partner it is apparent that even under the partnership deed he had no borrowing powers to bind the partnership firm and in relation to the loans, overdraft facilities or securities to be offered by the firm had no authority

to act on behalf of the firm.

23. Qua the second partner it is apparent that he was not only authorized to incur financial liability on behalf of the firm but was also authorized to issue securities on behalf of the firm.

24. Indeed, the cheque in question has been signed by the second partner. The petition is accordingly liable to succeed only qua petitioner No.5 impleaded as accused No.5.

25. Petition stands disposed of quashing the summoning order but only in relation to petitioner No.5 arrayed as accused No.5 in the complaint.

26. The petition is dismissed vis-a-vis the other petitioners.

August 10, 2007 **PRADEEP NANDRAJOG, J.**
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